

State of California
Regional Water Quality Control Board
North Coast Region

MINUTES OF MEETING
October 28, 1999
North Coast Regional Water Board
Hearing Room
5550 Skylane Boulevard, Suite A
Santa Rosa, California

Chairman Ross Liscum opened the October 28, 1999 meeting of the North Coast Regional Water Quality Control Board at 8:30 a.m. Bev Wasson led the Pledge of Allegiance.

Introductions

Chairman Liscum introduced the Board members present, State Water Board member John Brown, Executive Officer Lee Michlin, and Legal Counsel Phil Wyels.

Board Members Present

Bill Hoy, Jim Mitchell, Stan Plowman, Bev Wasson, and Ross Liscum

Staff Present

Lee Michlin, Craig Johnson, Bob Tancreto, Frank Reichmuth, Susan Warner, Bob Klamt, Tom Dunbar, John Hannum, John Short, Kathleen Daly, Diana Henri, Matthew Buffleben, Terence Dean, David Willoughby, Katharine Spivak, Chris Igbinedion, David Leland, Cathleen Hudson, Jean Spath, and Phil Wyels

Minutes of Meeting

Stan Plowman moved adoption of the September 22 and 23, 1999 minutes as presented. Jim Mitchell seconded the motion and it carried by a unanimous voice vote.

Executive Officer Lee Michlin introduced the new staff who were present at the Board meeting.

Public Forum

There was no one present who wished to address the Board.

1. PUBLIC HEARING to Consider whether to Affirm, Reject, or Modify a Complaint for Enforcement Action in the matter of Reza Bagheri for failure to comply with Time Schedule Order No. 97-112

Chairman Liscum opened the public hearing, read the hearing procedure, and swore in those presenting testimony.

Joan Fleck distributed a October 14, 1999 letter from Paul Dezurick, attorney from Robbins, Palmer & Allen representing the adjacent Transco Transmission site. Ms. Fleck recapped the Regional Water Board members' action at the September 23, 1999 public hearing. Those actions stated that: (a) the Executive Officer would issue a complaint for administrative civil liabilities to Mr. Bagheri for violations of Time Schedule Order No. 97-112 and include \$1,000 per day for any additional days of noncompliance since May 1999, (b) the Board declined to direct the issuance of an ACL to Mr. Mokalla based on Bagheri's 1991 purchase agreement to indemnify, defend and hold Mokalla harmless from any and all liabilities and obligations regarding the soil and groundwater contamination at the site, and (c) the Board determined that Mr. Bagheri would also be liable for an additional \$1,000 per day liability of the Complaint and the date of any subsequent hearing to affirm, reject, or modify the Complaint. On September 29, 1999, Mr. Michlin issued ACL Complaint No. 99-68 to Mr. Bagheri in accordance with the Board's direction for \$292,000. Ms. Fleck stated the sources of the gasoline vapors in the kiosk have not been abated nor have permits to operate been obtained. An NPDES permit application was submitted on October 25, 1999 but the application was incomplete and a resubmittal has not been received. She responded to questions from the Board.

Reza Bagheri, Penn Grove resident and 1410 Santa Rosa Avenue property owner, stated Dave Zedrick was a personal friend who would present testimony in his behalf.

Dave Zedrick, Santa Rosa resident, provided his personal background information and described his working relationship with Mr. Bagheri. He addressed Mr. Bagheri's present financial crisis and testified to his good character as a responsible individual. Mr. Zedrick distributed and read correspondence relating to Cleanup and Abatement Order No. 97-111 and Time Schedule Order No. 97-112. Messrs. Zedrick and Bagheri responded to questions from the Board members.

In response to Mr. Liscum's question, Ms. Fleck explained the operation of the groundwater, soil, and vapor extraction system which is installed at the Bagheri Santa Rosa Avenue site.

Rafael Gallardo, representing Gallardo & Associates, Inc., and Mr. Bagheri's consultant, stated his employment began in August 1998. His job responsibilities are limited to the quarterly and annual monitoring of onsite wells. Mr. Gallardo stated that monitoring well pumps have been installed in well Nos. 2 and 3. He stated Mr. Bagheri paid the NPDES permit fee this morning prior to today's hearing.

David Solis, Faultline Associates, Inc., stated Mr. Bagheri retained him as an engineering specialist to aid in the operation and maintenance of the treatment system. After Mr. Solis' review of the treatment system, he noted an initial design and operational flaw within the wells. The flow allowed a large quantity of water to be drawn into the burner system causing the burner

to malfunction. Analytical instruments were used to monitor the gasoline and hydrocarbon vapors present in the kiosk which were a violation of health and safety codes. The treatment system needs extensive repairs before it can be operated safely without endangering working personnel. He stated he is attempting to correct problematic areas. A series of planned pilot tests and feasibility analyses had been planned with the onsite treatment system; however, Mr. Baghery's financial discrepancies have forced him to abandon his working on the project.

There was discussion among Messrs. Gallardo, Solis and Ms. Fleck regarding suggested treatment system corrections. Mr. Baghery's application and receipt of Cleanup and Abatement Account funds.

Mr. Hans Herb, Santa Rosa attorney, stated he was Mr. Baghery's attorney for a number of years. It was his opinion the treatment system didn't work properly when it was installed on July 24, 1998.

Ms. Fleck clarified that Southland did not install a faulty system. She stated the system has not been operated as originally designed and discussed what permits and additional measures need to be implemented before the system is operational. She said she would work with Mr. Baghery and the Cleanup Fund to insure the work is completed and the individuals reimbursed.

The Regional Water Board adjourned to a closed session. Following the closed session, Stan Plowman moved that a new finding be inserted in Time Schedule Order No. 97-112 after existing Finding No. 12. Based on the testimony that was received at the meeting of October 28, 1999 hearing about actions necessary to be taken prior to the operation of the treatment system, the Board determines that the potential administrative civil liability of \$299,000 shall be reduced to \$250,000 and that the \$250,000 amount should be suspended contingent upon Baghery's future performance. Therefore, it is hereby ordered that Mr. Baghery pay an ACL in the amount of \$250,000. It is further ordered that the \$250,000 administrative civil liability shall be suspended contingent upon Mr. Baghery's continuous good faith operation of the soil and groundwater treatment system. If at any time the Executive Officer determines that Mr. Baghery or any of his successors is not operating the system in good faith, the full outstanding portion of the suspended ACL shall be immediately due and payable. It is further ordered that \$50,000 of the ACL shall be permanently suspended upon Mr. Baghery's completion of the following two tasks no later than December 1, 1999. (1) Identify and abate all the sources of the gasoline vapors in the kiosk including the proper abandonment of the onsite water supply well and sealing all conduits, and (2) attain all necessary permits to operate the soil and groundwater treatment system as designed including the National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated groundwater to surface water and a Bay Area Air Quality Management District permit for the operation of the soil vapor extraction system. It is further ordered that an additional \$25,000 of the ACL shall be permanently suspended upon Mr. Baghery's continuous good faith operation of the soil and groundwater treatment system including any necessary modifications to the system as determined by the Executive Officer during each calendar quarter commencing January 1, 2000. It is further ordered that the Executive Officer is authorized for any future noncompliance by Mr. Baghery or his successors to the District Attorney for prosecution. Jim Mitchell seconded the motion and it carried by a unanimous voice vote.

2. **PUBLIC HEARING** to Consider the City of Santa Rosa's Interim NPDES – Laguna Subregional Wastewater Facility and Revision of the Time Schedule Order in Cease and Desist Order No. 85-35

This hearing was not heard due to a lack of a quorum for the City of Santa Rosa items.

3. **EXECUTIVE OFFICER'S REPORT**

- a. **Reorganization Update & Budget Update**

Craig Johnson stated the North Coast Region is moving quickly through internal staff reorganization and the hiring process is drawing to a close. On October 15, 1999 there were 80 personnel on board with another 11 staff expected to be hired by November 1. He explained the SINC system as our new enforcement tracking process and SWIMs will be the Region's basic tracking system for all personnel outputs and expenditures.

Mr. Johnson stated the final budget figures are not complete and final allocations and positions need to be identified in the FY 1999-2000 budget.

- b. **Administrative Civil Liability Complaint Issues**

Mr. Michlin stated he has issued no administrative civil liability complaints to date.

- c. **Planning Amendment to Update Beneficial Use Designations**

Bob Klamt stated Table 2-1, Beneficial Water Uses in the North Coast Region, in our Basin Plan will be modified. The changes include: (a) a RARE designation for waterbodies with coho, chinook salmon, steelhead, or tidewater goby since they are listed under the federal Endangered Species Act; (b) uses for the Laguna de Santa Rosa to include wording as WARM, MIGR, and SPWN because the WARM was left out of the last update; (c) the addition of the MUN designation for freshwater streams in the Humboldt Bay hydrologic unit; (d) the deletion of the MUN designation for the Garcia River from "potential" to "existing"; and (e) clarification of the beneficial uses of groundwater. He said completion of the Laguna tributaries investigation with California Fish and Game is expected this fall and a report will be presented in early 2000.

- d. **State Water Board Stormwater Permit**

Bob Tancreto distributed a copy and discussed the National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges as adopted by the State Water Board in 1992. Order No. 99-08-DWQ is the first revision to the permit which covers clearing, grading, and other activities that result in soil disturbances of at

least five acres. The five acres can be reduced if they are part of a larger plan and future changes in the law may bring the figure to one or less acres. General permit conditions are very straight forward and the only prohibition states clean stormwater must be discharged. At this time, it is not feasible to have specific numeric effluent limitations for stormwater permits and only narrative limitations are included in the permit assuming the implementation of Best Management Practices (BMP). BMPs need to be implemented and operated to meet Basin Plan standards. Should the BMPs not be adequate, Best Available Treatment (BAT) and Best Conventional Pollutant Control Technology (BCPCT) can be utilized to meet the standards. The difference between the standards is the BMPs are controls at the source to keep the soils on the hillside and BATs and BCPCTs are treatment methods. Bob reviewed other changes noted in receiving water limitations and implementation of the permit on a year round basis.

Bob discussed the construction seminars which are scheduled in Santa Rosa, Ukiah, and Eureka from October 27 to November 5, 1999.

e. Update on Mirabel Heights

John Short stated the Mirabel Heights wastewater system consists of old poorly-designed septic systems. In addition, the area is made up of many small lots which provide little room for conventional leachfield disposal. A 1990 pollution study concluded that 71% of the developed parcels in the study area had failing or impaired septic systems resulting in public health hazards and groundwater contamination. The preferred wastewater treatment option which was selected included sewer construction and conveying the wastewater to the Forestville plant. An assessment district was established and the groundbreaking for the project was held. The construction schedule tasks are current and completion of the project is scheduled for summer 2000.

f. UC Davis ICE Demonstration Project

Lee Michlin said Region One has entered into a two-year pilot project to work with the UC Davis Information Center for the Environment. The goal is to optically scan and/or receive electronic document submittals for the Navarro River TMDL sediment project. If this project proves successful, then all of Region One's new and archived materials will be electronically scanned and stored.

4. Board of Forestry, Update on Forest Practice Rules Modifications

Chris Rowney, Executive Officer, Board of Forestry, discussed the critical changes in the statutes that control the Board of Forestry and the manner in which those laws can be implemented. He stated SB 621 (Sher) changed several aspects of their regulatory process. He stated there is a one-time only July 1, 2000 implementation date which is related to the Board's ongoing effort to address threatened and impaired watersheds and coho, steelhead,

and chinook habitats and 303(d) listed waterbodies. The other key issue relates to criminal penalties which can be assessed against violations of the Forest Practice Act and Rules with a maximum \$1,000 fine and/or six months in jail. As a result of SB 621's enactment, the Department and the Board will be able to assess up to \$10,000 per occurrence on a civil penalty basis. He briefly discussed other minor changes which occurred with the implementation of SB 621.

Mr. Rowney discussed the composition of his Board and the categories and term expiration dates. He stated the Board did adopt some changes in October 1999 as they relate to Forest Practice cumulative effects rules which will be implemented by January 1, 2000. He responded to questions from the Regional Water Board.

6. Violations and Enforcement Report

Craig Johnson explained the new violation and enforcement reporting system which will begin on January 2000 in coordination with the State Water Board's Enforcement Initiative and SB 709 (Migden). The Office of Chief Counsel is preparing a report detailing how the approved legislation will be utilized within the regions' enforcement structure. Any reported violation will require a minimum fine of \$3,000.

7. Resolution of Appreciation for Stan Plowman

Chairman Ross Liscum read Resolution No. 99-70 expressing appreciation to retiring Regional Water Board member Stan Plowman. Stan thanked everyone for being a part of the process and stated he enjoyed working with a good staff and Board. Executive Officer Lee Michlin and State Water Board representative, John Brown, both added their sincere best wishes to Stan.

Chairman Liscum adjourned the meeting at 12:10 p.m. The next Regional Water Board meeting will be held in Santa Rosa on Thursday, December 9, 1999.

Executive Assistant Jean Spath recorded the minutes of the October 28, 1999 meeting of the North Coast Regional Water Quality Control Board, approved by the Board at its next meeting.

Approved by: _____, Chair.